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Mattel, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MATTEL, INC.,

Plaintiff

v.

2012SHININGROOM2012, ALEXSTORE888,
ALIYA_SMILE, BIGMOUTH333,
CCS_ONLINE999, CONNIE_MONICA,
EBBPOP, EJEWELRYCODE,
FANHUASIJIIN02, FASHIONJEWELRY20136,
FENGHE2012, FLYFLOWER88, FUTALL,
GLORYROAD2015, GO-GIFT1225,
GYL09047, HANJINGYUHUAONE, HERPOP,
HG-TECH-LTD, HMZSLUCK, ILANTE, IN-
STYLE1820, JIALU-88, KEEPUPOP,
KTMAIL, KZYU_17, LAQ01018,
LUCKY992016, MUSENWAIMAO,
NEWANG, OVEPOP2009, POPULAR888,
PRCBEY, SANTAFE2016, SUMMER*2010*,
URCHOICE-LTD, XIAOTWAN_CBQZZ,
XYWL722, YUMISELL8, YUNWAWA527
and ZHANYTINO,

Defendants

Case No.: 18-cv-11648 (PKC)

**[PROPOSED]
JOINT PRE-TRIAL ORDER**

Plaintiff Mattel, Inc. (“Mattel”) hereby submits Plaintiff’s portion of the Proposed Joint Pre-Trial Order:

TRIAL GLOSSARY

Term	Definition
Plaintiff or Mattel	Mattel, Inc.
Defendants	ccs_online999, ebbpop, go-gift1225, Herpop, ilante, Keepupop, lucky992016 (a/k/a aux992016), ovepop2009, popular888 (a/k/a jingxia2019) and prcbey
eBay	eBay.com, a San Jose, California-based online marketplace and e-commerce platform owned by eBay Inc., a Delaware corporation, that allows manufacturers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale and/or sell in what it characterizes as either auction-style or fixed-price formats and ship their retail products, which, upon information and belief, originate from China, among other locations, directly to consumers worldwide and specifically to consumers residing in the U.S., including in New York
Epstein Drangel	Epstein Drangel LLP, counsel for Plaintiff
New York Address	105 Avenue B, Apt. 4B, New York, New York 10009
Complaint	Plaintiff’s Complaint filed on December 13, 2018
Application	Plaintiff’s <i>Ex Parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i>) and Defendants’ Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on December 13, 2019
Delanty Dec.	Declaration of Lisa Delanty in Support of Plaintiff’s Application
Scully Dec.	Declaration of Brieanne Scully in Support of Plaintiff’s Application
Arnaiz Dec.	Declaration of Jessica Arnaiz in Support of Plaintiff’s Application
Barbie Products	A vast range of commercial products, including, but not limited to, playhouses, toy cars, books, movies, games, puzzles and clothing marketed under the Barbie brand

Barbie Marks	<p>U.S. Trademark Reg. No. 1,300,766 for “BARBIE” for a variety of goods in Class 28, U.S. Trademark Reg. No. 1,693,139 for “BARBIE” for a variety of goods in Class 25, U.S. Trademark Reg. No. 1,746,477 for “BARBIE” for a variety of goods in Class 28, U.S. Trademark Reg. No. 1,754,535 for “BARBIE” for a variety of goods in Class 25, U.S. Trademark Reg. No. 1,773,571 for “BARBIE” for a variety of goods in Class 14, U.S. Trademark Reg. No. 2,040,801 for “BARBIE” for a variety of goods in Class 25, U.S. Trademark Reg. No. 3,287,023 for “BARBIE” for a variety of goods in Class 28, U.S. Trademark Reg. No. 2,087,842 for  for a variety of goods in Class 28 and  U.S. Trademark Reg. No. 2,639,971 for for a variety of goods in Classes 25 and 28</p>
Barbie Works	U.S. Copyright Reg. No. VA 1-884-053, covering the Barbie Silhouette Head, U.S. Copyright Reg. No. VA 1-843-508, covering The Fabulous Life of Barbie Style Guide 2011, U.S. Copyright Reg. No. VA 1-849-098, covering the Barbie 2012 Style Guide, Copyright Reg. No. VA 1-849-097, covering the Barbie 2013 Style Guide, and U.S. Copyright Reg. No. PA 1-647-312, covering Barbie and The Diamond Princess Castle
Counterfeit Products	Products bearing or used in connection with the Barbie Marks and/or Barbie Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Barbie Marks and/or Barbie Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Barbie Marks and/or Barbie Works and/or products that are identical or confusingly or substantially similar to the Barbie Products
Infringing Listings	Defendants’ listings for Counterfeit Products
User Accounts	Any and all websites and any and all accounts with online marketplace platforms such as eBay, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them
Merchant Storefronts	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with

	any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)
Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer"), PingPong Global Solutions, Inc. ("PingPong") and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants
Third Party Service Providers	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly by eBay, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise

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II. STIPULATED FACTS

1. Defendants ccs_online999, ebbpop, go-gift1225, Herpop, ilante, Keepupop, lucky992016 (a/k/a aux992016), ovepop2009, popular888 (a/k/a jingxia2019)¹ and prcbey are merchants on the eBay.com online marketplace platform.
2. Defendants lucky 992016 (a/k/a aux992016), popular888 (a/k/a jingxia2019) and ilante share a common owner, 雅秦.²
3. Defendants Herpop, go-gift1225 and prcbey share a common owner, 黃冬武 黃冬武.
4. Defendants Keepupop, ebbpop and ovepop2009 share a common owner, 小玲 高.
5. The owner of Defendant ccs_online999 is 罗斌 罗斌.
6. Plaintiff, through its family of companies, is a leading designer, developer, marketer, manufacturer and distributor of well-known children's toys and games ("Mattel

¹ Throughout this action, Defendants lucky992016 and popular888 have been referred to by Defendants' counsel as aux992016 and jingxia2019, respectively.

² Plaintiff's counsel does not have the English translation of each Defendants' owner's names, this information is to be provided by Defendants' counsel.

- Products") under its iconic brands, including, but not limited to: Barbie, Thomas & Friends, Hot Wheels, American Girl and Fisher-Price ("Mattel Brands").
7. Plaintiff sells its Mattel Products worldwide through major retailers, quality toy stores and online marketplaces.
 8. One of Plaintiff's most popular and successful brands is Barbie, which has become world famous ("Barbie").
 9. In 1991 the U.S. Court of Appeals for the Second Circuit recognized that Barbie is the best-selling toy doll in the world,³ and in 1998, current Supreme Court Justice Sonia Sotomayor wrote that "by any measure – the world-known BARBIE is a 'famous' trademark under the Federal Anti-Dilution Act."⁴
 10. The Barbie brand includes a vast range of commercial products, including, but not limited to, dolls, playhouses, toy cars, books, movies, games, puzzles and clothing ("Barbie Products").
 11. Plaintiff is the owner of a number of US Trademark Registrations for BARBIE or BARBIE formative marks, including but not limited to: U.S. Trademark Reg. No. 1,300,766 for "BARBIE" for a variety of goods in Class 28, U.S. Trademark Reg. No. 1,693,139 for "BARBIE" for a variety of goods in Class 25, U.S. Trademark Reg. No. 1,746,477 for "BARBIE" for a variety of goods in Class 28, U.S. Trademark Reg. No. 1,754,535 for "BARBIE" for a variety of goods in Class 25, U.S. Trademark Reg. No. 1,773,571 for "BARBIE" for a variety of goods in Class 14, U.S. Trademark Reg. No. 2,040,801 for "BARBIE" for a variety of goods in Class 25, U.S. Trademark Reg. No. 3,287,023 for "BARBIE" for a variety of goods

³ *Miss America Organization v. Mattel, Inc.*, 945 F.2d 536, 537 (2d Cir. 1991).

⁴ *Mattel, Inc. v. Jcom, Inc.*, 1998 U.S. Dist. LEXIS 16195, *9 (S.D.N.Y. Sep. 10, 1998).

in Class 28, U.S. Trademark Reg. No. 2,087,842 for  for a variety of

goods in Class 28 and U.S. Trademark Reg. No. 2,639,971 for  for a variety of goods in Classes 25 and 28 (collectively, the “Barbie Marks”).

12. Plaintiff’s registrations for the Barbie Marks are valid and incontestable.
13. Plaintiff is the exclusive owner of all right and title to the Barbie Marks.
14. Plaintiff has used the Barbie Marks in interstate commerce since on or before the dates of first use as reflected in the registrations.
15. Plaintiff is the owner of U.S. Copyright Registrations for Barbie brand designs and imagery, including but not limited to: U.S. Copyright Reg. No. VA 1-884-053, covering the Barbie Silhouette Head, U.S. Copyright Reg. No. VA 1-843-508, covering The Fabulous Life of Barbie Style Guide 2011, U.S. Copyright Reg. No. VA 1-849-098, covering the Barbie 2012 Style Guide, Copyright Reg. No. VA 1-849-097, covering the Barbie 2013 Style Guide, and U.S. Copyright Reg. No. PA 1-647-312, covering Barbie and The Diamond Princess Castle (collectively, the “Barbie Works”).
16. Plaintiff is the exclusive owner of the Barbie Works.
17. Defendants are individuals and/or businesses which are located in China but conduct business in the U.S. and other countries by means of their User Accounts and Merchant Storefronts on eBay as well as potential yet undiscovered additional online marketplace platforms.
18. Plaintiff retained New Alchemy Limited (“NAL”), a company that provides trademark infringement research services, to investigate and research manufacturers,

wholesalers, retailers and/or other merchants offering for sale and/or selling Counterfeit Products on eBay.

19. NAL took screenshots of Defendants' ccs_online999, ilante, Herpop, go-gift1225, lucky992016 (a/k/a aux992016), popular888 (a/k/a jingxia2019), prcbey, Keepupop, ebbpop and ovepop2009 storefronts on ebay.com.
20. Defendant ccs_online offered for sale and/or sold products with the listing title "New A Deck Cartoon Poker Barbie playing card" on eBay for \$2.84 per item ("ccs_online Products").

21. Below is a photo of the ccs_online Product:



22. Defendant ccs_online sold seven (7) ccs_online Products on eBay.
23. Defendant ccs_online sold at least one (1) ccs_online Product to a consumer located in New York.
24. The ccs_online Product is not and has never been sold by Mattel or its licensees.
25. Defendant ccs_online was not authorized by Mattel or its licensees to sell the ccs_online Product.

26. Defendant ebbpop offered for sale and sold products with the listing title “Lot Cartoon barbie straps Lanyard ID Bade Holders Mobile Neck Key chains gifts” on eBay for \$9.90 for ten (10) pieces (“ebbpop Product”).
27. Below is a photo of the ebbpop Product:



28. Defendant ebbpop sold six (6) ebbpop Products on eBay.
29. Defendant ebbpop sold at least one (1) ebbpop Product to a consumer located in New York.
30. The ebbpop Product is not sold and has never been by Mattel or its licensees.
31. Defendant ebbpop was not authorized by Mattel or its licensees to sell the ebbpop Product.
32. Defendant go-gift1225 offered for sale and sold products with the listing title “10 pcs Barbie princess Neck Strap Lanyard Keychain Phone Card Bade Holder L46” on eBay for \$9.00 for ten (10) pieces (“go-gift1225 Product”).
33. Below is a photo of the go-gift1225 Product:



34. Defendant go-gift1225 sold one hundred eighteen (118) go-gift1225 Products on eBay.
35. The go-gift1225 Product is not sold and has never been by Mattel or its licensees.
36. Defendant go-gift1225 was not authorized by Mattel or its licensees to sell the go-gift1225 Product.
37. Defendant herpop offered for sale and sold products with the listing title “Lot 10 pcs Barbie princessChildren cartoon girl cotton underwear Boxer shorts” on eBay for \$17.26 per item (“herpop Product”).
38. Below is a photo of the herpop Product:



39. Defendant herpop sold one hundred sixty five (165) herpop Products on eBay.
40. Defendant herpop sold at least one (1) herpop Product to a consumer located in New York.
41. The herpop Product is not and has never been sold by Mattel or its licensees.
42. Defendant herpop was not authorized by Mattel or its licensees to sell the herpop Product.
43. Defendant ilante offered for sale and sold products with the listing title “barbie doll face Hard Phone Cover Case for Huawei P8 P9 P 10 Lite” on eBay for \$2.99 per item (“ilante Product”).
44. Below is a photo of the ilante Product:



45. Defendant ilante sold nine (9) ilante Products on eBay.
46. Defendant ilante sold at least one (1) ilante Product to a consumer located in New York.
47. The ilante Product is not sold and has never been by Mattel or its licensees.
48. Defendant ilante was not authorized by Mattel or its licensees to sell the ilante Product.
49. Defendant keepupop offered for sale and sold products with the listing title “6pcs/lot cartoon Barbie Children Girl’ cotton underwear triangle pants” on eBay for \$9.60 per item (“keepupop Product”).
50. Below is a photo of the keepupop Product:



51. Defendant keepupop sold four (4) keepupop Products on eBay.
52. The keepupop Product is not and has never been sold by Mattel or its licensees.
53. Defendant keepupop was not authorized by Mattel or its licensees to sell the keepupop Product.
54. Defendant lucky992016 (a/k/a aux992016) offered for sale and sold products with the listing title “barbie doll face 1959 Cute Hard Phone Case Cover for iphone 5 6 7 8 plus x” on eBay for \$2.99 per item (“lucky992016 Product”).
55. Below is a photo of the lucky992016 Product:



56. Defendant lucky992016 sold twenty nine (29) lucky992016 Products on eBay.
57. The lucky992016 Product is not and has never been sold by Mattel or its licensees.
58. Defendant lucky992016 was not authorized by Mattel or its licensees to sell the lucky992016 Product.
59. Defendant popular888 (a/k/a jingxa2019) offered for sale and sold products with the listing title “barbie doll face for girl Hard Phone Cover Case for iphone 5 6 7 8 X” on eBay for \$2.89 per item (“popular888 Product”).
60. Below is a photo of the popular888 Product:



61. The popular888 Product is not and has never been sold by Mattel or its licensees.
62. Defendant popular888 was not authorized by Mattel or its licensees to sell the popular888 Product.
63. Defendant popular888 sold one hundred thirty seven (137) popular888 Products on eBay.
64. Defendant popular sold at least one (1) popular888 Product to a consumer located in New York
65. Defendant prcbey offered for sale and/or sold products with the listing title “Lot cartoon Barbie princess Neck Straps Lanyards Mobile Phone ID Card Key” on eBay for \$1.90 per item (“prcbey Product”).
66. Below is a photo of the prcbey Product:



67. The prcbey Product is not sold by Mattel.
68. Defendant sold forty nine (49) prcbey Products on eBay.
69. Defendant prcbey was not authorized by Mattel or its licensees to sell the prcbey Product.
70. Defendants manufacture, advertise, market, promote, offer for sale and sell products bearing or used in connection with the Barbie Marks.

71. Defendants reproduce, prepare derivative works, distribute and/or sell products bearing or used in connection with the Barbie Works.

III. CLAIMS AND DEFENSES TO BE TRIED

A. Plaintiff's Claims

1. Defendants' actions constitute willful counterfeiting of the Barbie Marks in violation of 15 U.S.C. §§ 1114(1)(a)-(b), 1116(d) and 1117(b)-(c).
2. Defendants' continued, knowing, and intentional use of the Barbie Marks without Plaintiff's consent or authorization constitutes intentional infringement of Plaintiff's federally registered Barbie Marks in violation of §32 of the Lanham Act, 15 U.S.C. § 1114.
3. Defendants knew, or by the exercise of reasonable care should have known, that their adoption and commencement of and continuing use in commerce of marks and artwork that are identical or confusingly or substantially similar to and constitute reproductions of the Barbie Marks and Barbie Works would cause confusion, mistake or deception among purchasers, users and the public in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
4. Defendants' unlawful and willful actions constitute infringement of the Barbie Works, including Plaintiff's exclusive rights to reproduce, prepare derivative works, distribute and/or sell such Barbie Works in violation of 17 U.S.C. § 501(a).

B. Defendants' Defenses

IV. JURY/NON-JURY

A. Plaintiff's Position

This matter will be tried before a jury. It is Plaintiff's position that the trial will last for

one (1) day.

V. DEPOSITION TESTIMONY TO BE OFFERED

None.

VI. PLAINTIFF'S EXHIBITS/ DEFENDANTS' EXHIBITS

A. Plaintiff's Exhibits

1. Registration Certificate for U.S. Trademark Reg. No. 1,300,766.
2. Registration Certificate for U.S. Trademark Reg. No. 1,693,139.
3. Registration Certificate for U.S. Trademark Reg. No. 1,746,477.
4. Registration Certificate for U.S. Trademark Reg. No. 1,754,535.
5. Registration Certificate for U.S. Trademark Reg. No. 1,773,571.
6. Registration Certificate for U.S. Trademark Reg. No. 2,040,801.
7. Registration Certificate for U.S. Trademark Reg. No. 3,287,023.
8. Registration Certificate for U.S. Trademark Reg. No. 2,087,842.
9. Registration Certificate for U.S. Trademark Reg. No. 2,639,971.
10. Registration Certificate for U.S. Copyright Reg. No. VA 1-884-053 and corresponding deposit materials.
11. Registration Certificate for U.S. Copyright Reg. No. VA 1-843-508 and corresponding deposit materials.
12. Registration Certificate for U.S. Copyright Reg. No. VA 1-849-098 and corresponding deposit materials.
13. Registration Certificate for U.S. Copyright Reg. No. VA 1-849-097 and corresponding deposit materials.
14. Registration Certificate for U.S. Copyright Reg. No. PA 1-647-312 and corresponding deposit materials.

15. Screenshots of Defendant ccs_online999's Merchant Storefront on eBay and listing(s) for Counterfeit Products.
16. Screenshots of Defendant aux992016's Merchant Storefront on eBay and listing(s) for Counterfeit Products.
17. Screenshots of Defendant jingxia2019's Merchant Storefront on eBay and listing(s) for Counterfeit Products.
18. Screenshots of Defendant ilante's Merchant Storefront on eBay and listing(s) for Counterfeit Products.
19. Screenshots of Defendant Herpop's Merchant Storefront on eBay and listing(s) for Counterfeit Products.
20. Screenshots of Defendant go-gift1225's Merchant Storefront on eBay and listing(s) for Counterfeit Products.
21. Screenshots of Defendant prcbey's Merchant Storefront on eBay and listing(s) for Counterfeit Products.
22. Screenshots of Defendant Keepupop's Merchant Storefront on eBay and listing(s) for Counterfeit Products.
23. Screenshots of Defendant ebbpop's Merchant Storefront on eBay and listing(s) for Counterfeit Products.
24. Screenshots of Defendant ovepop2009's Merchant Storefront on eBay and listing(s) for Counterfeit Products.
25. eBay's Expedited Discovery as ordered by the TRO.
26. Defendants' Expedited Discovery as ordered by the TRO (ten (10) excel spreadsheets).

27. Plaintiff's Rule 34 Document Requests and December 2, 2019 e-mail from Defendants' counsel, Sam (Shengmao) Mu, and its attachments, containing Defendants' response to Plaintiff's Document Demand.

28. Plaintiff's Initial Disclosures.

29. Plaintiff's Response to the Wang Defendants Interrogatories.

VII. STATEMENT OF DAMAGES

A. Plaintiff's Counterfeiting Claim Trademark Counterfeiting Under Sections 32, 34, and 35 of the Lanham Act, 15 U.S.C. §§ 1114(1)(b), 1116(d), and 1117(b)-(c))

Plaintiff is entitled to damages in the forms of injunctive relief, damages for the irreparable harm that Plaintiff has sustained, and will sustain, as a result of Defendants' unlawful and infringing actions, to be proven at trial, and all gains, profits and advantages obtained by Defendants as a result thereof, enhanced discretionary damages, treble damages and/or statutory damages of up to \$2,000,000 per counterfeit mark per type of goods sold, offered for sale or distributed and reasonable attorneys' fees and costs.

B. Plaintiff's Infringement of Registered Trademarks Claim

Pursuant to 115 U.S.C. § 1114/Lanham Act § 32(a), and based on Defendants' actions to be proven at trial, Plaintiff is entitled to injunctive relief, damages for the irreparable harm that Plaintiff has sustained, and will sustain, as a result of Defendants' unlawful and infringing actions as alleged herein, and all gains, profits and advantages obtained by Defendants as a result thereof, enhanced discretionary damages, as well as other remedies provided by 15 U.S.C. §§ 1116, 1117, and 1118, and reasonable attorneys' fees and costs.

C. Plaintiff's False Designation of Origin, Passing Off & Unfair Competition Claim

Pursuant to 15 U.S.C. § 1125(a), and based on Defendants' wrongful conduct, Plaintiff is entitled to injunctive relief as well as monetary damages, including damages that Plaintiff has

sustained and will sustain as a result of Defendants' illegal and infringing actions, and all gains, profits and advantages obtained by Defendants as a result thereof, enhanced discretionary damages and reasonable attorneys' fees and costs.

D. Plaintiff's Infringement of Federal Copyrights Claim

Pursuant to 17 U.S.C. § 501(a), and based on Defendants' unlawful and willful actions to be proven at trial, Plaintiff is entitled to injunctive relief, and either: (1) Plaintiff's actual damages and Defendants' profits and enhanced discretionary damages for willful copyright infringement, as well as reasonable attorneys' fees and costs; or (2) statutory damages between \$750 and \$30,000 for each work infringed and if the infringement was willful, an award as much as \$150,000 for each work willfully infringed.

VIII. WITNESSES

A. Plaintiff's Witnesses

Plaintiff intends to call Diane Reichenberger, Vice President of Mattel, Inc. as a witness at the trial of this action.

B. Defendants' Witnesses

SO ORDERED.

SIGNED this _____ day of _____, 2020, at _____ .m.
New York, New York

HON. P. KEVIN CASTEL
UNITED STATES DISTRICT JUDGE